Supreme Court, U.S.
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No. 87-209

In The
Supreme Court of the United States
October Term, 1987

SHERMAN COLLEGE OF STRAIGHT CHIROPRACTIC AND STRAIGHT CHIROPRACTIC ACADEMIC STANDARDS ASSOCIATION, INC.,

Petitioners,

v.

AMERICAN CHIROPRACTIC ASSOCIATION, INC., THE COUNCIL ON CHIROPRACTIC EDUCATION, INC., NATIONAL BOARD OF CHIROPRACTIC EXAMINERS AND SID E. WILLIAMS,

Respondents.

SID E. WILLIAMS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the courts below correctly hold that Petitioners failed to carry their burden of proof that the conduct of this and the other respondents had an anti-competitive effect in any relevant market?

2. Did the courts below correctly hold that the *Noerr-Pennington* doctrine exempted from antitrust liability the Respondents' petitioning activities before various state and federal agencies?

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STATEMENT OF CASE

Respondent Sid E. Williams ("Dr. Williams") concurs with the comments and restatement of the facts of this case as set out in the briefs in opposition to the Petition for Certiorari filed by the Council on Chiropractic

Education ("CCE"), the National Board of Chiropractic Examiners ("NBCE") and the American Chiropractic Association, Inc. ("ACA"). Additionally, there are a few relevant facts peculiar to Dr. Williams which have not been adequately briefed.

Dr. Williams is the only individual Respondent in this case. He is the President of Life Chiropractic College, Inc. located in Marietta, Georgia. He does not compete with any of the other Respondents nor in his individual capacity does he compete with any of the Petitioners.

Consistent with the comments made by the CCE and ACA in their briefs, Dr. Williams is a "straight" chiropractor as that term is traditionally defined. In other words, Dr. Williams believes a chiropractor should use only spinal adjustment in the care of his patients where as other chiropractors, traditionally called "mixers", use adjunctive therapies or modalities in the care of patients in addition to spinal adjustments. The Petitioners represent still a third philosophy within the chiropractic profession which the Trial Court correctly defined as "anti-diagnostic." The Petitioners do not believe a chiropractor should receive clinical training in diagnostic procedures whereas students who attend colleges accredited by the CCE receive clinical diagnostic training.

The Petitioners attach to their Petition for Certiorari the order entered by the Trial Court granting judgment in favor of the CCE and the NBCE and the order granting judgment to the ACA. The Petitioners failed to inform this Court that an additional order was entered immediately upon the conclusion of the trial setting out find-

ings and fact and conclusions of law as to Dr. Williams. A copy of this order is attached as an Appendix to this brief. The trial court simply held with regard to Dr. Williams that the Petitioners "failed to carry their burden of proof with respect to any allegation against Dr. Williams for damages or injunctive relief under the Sherman Antitrust Act. . . ."

The Trial Court concluded as a matter of fact that the only credible evidence contained in the record with respect to Dr. Williams to allow an inference that he was part of any conspiracy consisted of the transcript of testimony he gave before a Commission of the United States Office of Education in 1979 and testimony of a Dr. Ronald Hash before the New Hampshire Board of Chiropractic Examiners in 1983. While the Trial Court found that the testimony of Dr. Williams was protected under the *Noerr-Pennington* doctrine it further concluded that even if there were no *Noerr-Pennington* protection, the Petitioners had simply failed to carry their burden of proof.

———o———

SUMMARY OF ARGUMENT

It is the position of Dr. Williams that this case presents no novel or complex issue for this court to decide. With respect to Dr. Williams, it is a case where the petitioners failed to prove the facts necessary to carry their burden of proof and where the lobbying activity of Dr. Williams was protected from antitrust restrictions by the *Noerr-Pennington* doctrine.

———o———

ARGUMENT

I. Did the courts below correctly hold that Petitioners failed to carry their burden of proof that the conduct of this and other Respondents had an anticompetitive effect in any revelvant market?

So as to avoid repetitious argument, Dr. Williams adopts and includes in his argument the briefs filed by the CCE, NBCE and ACA.

Dr. Williams was granted judgment in his favor by the Trial Court in Findings and Facts and Conclusions of law which were filed with the clerk on April 17, 1986 (see annex). Nowhere in Petitioners' brief do they argue that these findings of fact are clearly erroneous. In fact, nowhere in Petitioners' brief before this Court or before the Court of Appeals are these findings or Facts and Conclusions of law discussed.

When considered as part of the record, the Trial Courts' order concerning Dr. Williams takes this case out of any category which should be reviewed by this Court, at least with respect to Dr. Williams. The findings of the Trial Court on matters of fact are sacrosanct unless a clear error has been made. *Dothan Coca Cola Bottling Co. v. United States*, 745 F.2d 1400 (5th Cir. 1984). A factual finding is "clearly erroneous" if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id* at 1404-05. (Citing *United States v. U.S. Gypsum Co.*, 333 U.S. 364 (1948)). The clearly erroneous test is equally applicable to an antitrust action. *See United States v.*

Yellow Cab Co., 338 U.S. 338 (1949). Petitioners do not argue that any of the Trial Court's findings are clearly erroneous thus giving this Court no basis to review the factual basis of the decisions below.

The judgment in favor of Dr. Williams does not rely upon the intricacies of antitrust law. Instead, it is simply a question of whether the plaintiffs proved their case. The Trial Court concluded they did not and that should end the necessity of reviewing irrelevant legal questions.

II. Did the Courts below correctly hold that the Noerr-Pennington doctrine exempted from antitrust liability the Respondents' petitioning activities before various state and federal agencies?

The Trial Court found that the only credible evidence contained in the entire record regarding Dr. Williams' alleged liability consisted of petitioning activity of Dr. Williams and one of his associates before the United States Office of Education and the New Hampshire Board of Chiropractic Examiners. The Trial Court held that Dr. Williams' testimony clearly was protected activity pursuant to the *Noerr-Pennington* doctrine. *See generally, United Mine Workers v. Pennington*, 381 U.S. 657 (1965); *Eastern Railroad President's Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961). The Court further concluded that even if it were not protected the evidence did not preponderate in favor of petitioners.

The activity of Dr. Williams in presenting his views to governmental bodies is classic protected petitioning activity. There is nothing in the activity of Dr. Williams which creates a novel situation. In any event, Dr. Wil-

liams concurs and adopts the arguments of the other Respondents regarding *Noerr-Pennington.*

———o———

CONCLUSION

Thus, with respect to Dr. Williams, this case presents no novel issues that require review by this court. The Court of Appeals, having thoroughly reviewed the record and after listening to oral argument, affirmed the decision of the Trial Court without additional opinion. It obviously concluded that no significant issues were presented which required lengthy discussion. Dr. Williams respectfully requests this Court to deny the Petition for Certiorari.

Respectfully submitted,

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APPENDIX A

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHERMAN COLLEGE OF STRAIGHT CHIROPRACTIC, INC., et al.,	)	
Plaintiffs,	)	
vs.	)	Civil Action, File No. C81-1767A
AMERICAN CHIROPRACTIC ASSOCIATION, INC., et al.,	)	
Defendants.	)	

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO DEFENDANT
SID E. WILLIAMS

(Filed April 17, 1985)

This case having come on regularly for trial before the Court, sitting without a jury, on March 11, 1985, and the Court having considered the evidence presented, the Court hereby makes the following Findings of Fact and Conclusions of Law with respect to Defendant Sid E. Williams ("Dr. Williams") and enters its Order as follows:

1.

Plaintiffs alleged that Dr. Williams combined and conspired with Defendants American Chiropractic Association, Council on Chiropractic Education and the National Board of Chiropractic Examiners (hereinafter re-

ferred to as "the other Defendants") and other parties not before the Court unreasonably to restrain competition and unreasonably to interfere with Plaintiffs' ability to function and compete in the chiropractic profession in violation of § 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

2.

Plaintiffs alleged that Dr. Williams attempted to monopolize, combined and conspired with the other Defendants and other parties not before the Court to monopolize the chiropractic profession, including but not limited to accreditation of chiropractic colleges, the testing of applicants for licensure, chiropractic education, entry into the profession and the practice of chiropractic in the United States, in violation of § 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

3.

Plaintiffs alleged they suffered injury and damages as a result of the alleged activities of Dr. Williams.

4.

Dr. Williams is President of Life Chiropractic College, a nonprofit, tax exempt professional school which has recognized candidate for accreditation status with the Council on Chiropractic Education.

5.

The Court finds the only credible evidence contained in the record sufficient to allow an inference that Dr. Williams was a part of the conspiracy as alleged or suffi-

cient to allow an inference Dr. Williams allegedly violated the antitrust laws, was his testimony before a Commission of the United States Office of Education in 1979 and the testimony of Dr. Ronald Hash, a representative of Life Chiropractic College, before the New Hampshire Board of Chiropractic Examiners in 1983.

6.

The Court finds that the testimony of Dr. Williams before a Commission of the United States Office of Education was protected activity under the Noerr-Pennington Doctrine. *See generally, United Mine Workers v. Pennington,* 381 U.S. 657 (1965); *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961).

7.

The Court does not reach a decision as to whether the testimony of Dr. Hash was protected activity under the Noerr-Pennington Doctrine.

8.

The Court finds that even if the testimony of Dr. Williams or Dr. Hash were not protected activities under the Noerr-Pennington Doctrine, and assuming that Dr. Hash's testimony is attributable to Dr. Williams, the total evidence against Dr. Williams is insufficient to supply a preponderance of the evidence with respect to his involvement in any claimed conspiracy or violation of the federal antitrust laws.

9.

The Court finds the Plaintiffs have failed to carry their burden of proof with respect to any allegation against Dr. Williams for damages or injunctive relief under the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*

WHEREFORE, IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Defendant Sid E. Williams and against the Plaintiffs Sherman College of Straight Chiropractic, Inc., Straight Chiropractic Academic Standards Association, Inc., William Sukovitch and Michael J. Kudlas with costs cast upon the Plaintiffs.

SO ORDERED, this 16 day of April, 1985.

/s/ Orinda D. Evans
UNITED STATES DISTRICT JUDGE